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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

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6 STANLEY MARKS,

7 Plaintiff,

Case No. 3:19-cv-00126-MMD-CLB

8 v.

ORDER

9 SAMUEL ACOSTA,

10 Defendant,  
11

12 This is a *pro se* civil rights action filed under 42 U.S.C. § 1983 by a person in the  
13 custody of the Nevada Department of Corrections. On December 12, 2019, the Court  
14 issued an order dismissing the Complaint with leave to amend. (ECF No. 8 at 8). The  
15 Court subsequently gave Plaintiff until February 21, 2020 to file an amended complaint.  
16 (ECF No. 12.) The time period for filing an amended complaint has now expired, and  
17 Plaintiff has not filed an amended complaint or otherwise responded to the Court's order.

18 District courts have the inherent power to control their dockets and "[i]n the  
19 exercise of that power, they may impose sanctions including, where appropriate . . .  
20 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
21 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure  
22 to prosecute an action, failure to obey a court order, or failure to comply with local rules.  
23 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance  
24 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for  
25 failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856  
26 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
27 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833  
28 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*

1 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
2 failure to comply with local rules).

3 In determining whether to dismiss an action for lack of prosecution, failure to obey  
4 a court order, or failure to comply with local rules, the court must consider several factors:  
5 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
6 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
7 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
8 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;  
9 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

10 In the instant case, the Court finds that the first two factors, the public's interest in  
11 expeditiously resolving this litigation and the Court's interest in managing the docket,  
12 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
13 in favor of dismissal, since a presumption of injury arises from the occurrence of  
14 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
15 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy  
16 favoring disposition of cases on their merits—is greatly outweighed by the factors in favor  
17 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
18 the court's order will result in dismissal satisfies the "consideration of alternatives"  
19 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
20 at 1424. The Court's order requiring Plaintiff to file an amended complaint within 30 days  
21 expressly stated: "If plaintiff does not timely file an amended complaint curing the stated  
22 deficiencies as outlined in the Court's screening order, this action shall be dismissed with  
23 prejudice for failure to state a claim." (ECF No. 12 at 2). Thus, Plaintiff had adequate  
24 warning that dismissal would result from his noncompliance with the Court's order to file  
25 an amended complaint within 30 days.

26 For the foregoing reasons, it is ordered that Plaintiff's application to proceed *in*  
27 *forma pauperis* (ECF No. 4) without having to prepay the full filing fee is granted. Plaintiff  
28 will not be required to pay an initial installment fee. Nevertheless, the full filing fee will still

1 be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform Act.  
2 The movant herein is permitted to maintain this action to conclusion without the necessity  
3 of prepayment of fees or costs or the giving of security therefor.

4 Pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department of Corrections will  
5 pay to the Clerk of the United States District Court, District of Nevada, 20% of the  
6 preceding month's deposits to Plaintiff's account (Stanley Marks, #1089117), in the  
7 months that the account exceeds \$10.00, until the full \$350.00 filing fee has been paid  
8 for this action. The Clerk of the Court is instructed to send a copy of this order to the  
9 Finance Division of the Clerk's Office. The Clerk of the Court will also send a copy of this  
10 order to the attention of the Chief of Inmate Services for the Nevada Department of  
11 Corrections, P.O. Box 7011, Carson City, NV 89702.

12 It is further ordered that, regardless of the success of Plaintiff's action, the full filing  
13 fee will still be due, pursuant to 28 U.S.C. §1915, as amended by the Prisoner Litigation  
14 Reform Act.

15 It is further ordered that this action is dismissed with prejudice based on Plaintiff's  
16 failure to state a claim.

17 It is further ordered that the Clerk of Court enter judgment accordingly and close  
18 this case.

19 DATED THIS 3<sup>rd</sup> day of March 2020.

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21   
22 MIRANDA M. DU  
23 CHIEF UNITED STATES DISTRICT JUDGE  
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